

ANNEX

THE CODE OF REGULATIONS OF MUSLIM LEGISLATION /SHARIAH/ CONCERNING WATER USE AND LAND USE³⁹

/From archival documents of the former Administration for Irrigation Works in Turkistan "IRTUR"/

PREFACE

The water legislation was being formed in Turkistan during millennia, and it is of great value here since water means both life and well-being; famine, death, and resettlement follow the lack of water, its depletion, or unfair allocation. After conquest of Turkistan, the Russian Government unfamiliar with local conditions had to allow to elected representatives of the native population to manage all affairs, which were not of political value, and has retained in force of customs and local written laws (the Shariah). The Kirghiz population has used the Adat in that sphere of legal relationships that could not be regulated by Russian laws for the certain period.

In 1877, 12 years after the conquest of Tashkent, K.P. Kaufman has put into force the temporary rules for the practice of irrigation. Shortly, actual results have revealed the discrepancy of these rules to practical needs (it was naturally due to non-competency of the Russian administration in new business and in the legislation of the Muslim population). However, despite of understanding of an abnormality of this situation, the administration did not attempt to study the local customary water legislation and to organize the proper water use.

Under developing the projects for irrigation and colonization in Turkistan, the former Administration for Irrigation Works in Turkistan (IRTUR) has recognized the necessity of learning the local legislation in detail and has charged a certain Davletshin, the skilled expert on Turkistan's customs, to translate the necessary articles of the Shariah.

Disbanding of IRTUR did not allow to complete this assignment, and a manuscript of translated documents, which was in the record-keeping office of IRTUR, even without the signature of Davletshin, was handed over to A.E. Shmidt, the Professor of the Institute of Oriental Studies in Tashkent, for reviewing, who has written the following review:

1. The manuscript represents a translation of the corresponding chapters of the Shariah from the Arabic language into Russian Language made in the process of compilation of several sources that the author of this translation has indicated.

³⁹ Journal «Irrigation Bulletin», 1924, No 9

2. It was impossible to check up completely the translation and work of the author in respect of his compilation, because I could not get all primary sources used by the translator.

3. The translation of that part, which I managed to check up, is made correctly; I have afforded to make only some amendments.

4. I believe that the translation of other parts was made also well, but, certainly, without full comparing with primary sources I cannot be in full sure, because there were small discrepancies in some articles, if we judge according to the original context.

5. On the merits, in my opinion, the publication of these regulations is extremely desirable, since it enables all interested persons get acquainted with regulations of the Shariah just on those issues which are so important here, in Turkistan, and because the Shariah, undoubtedly, greatly affected the norms of customary law, which have been formed during centuries.

Prof. Shmidt

ABOUT DEAD EARTH

1

The dead earth is that earth, which cannot be used due to lack of water there or its flooding, or for other reasons that impede its tilling (*if we deal with waterlogging or desertification with sanding up – author's note*). See Fath al-Qadir, Vol. IX, Page 2; Ibn Abidin, Vol. V, Pages 306 and 307; Mukhtasar al-Quduri, Page 75; and Sharh Ilyas Vol. III, Pages 258 and 259.

2

That earth which has no owners and is in desolation if it is located at such a distance from the nearest settlement that a loud human voice from that settlement cannot reach one's ears on that earth also refers to the dead earth. See Fath al-Qadir, Vol. IX, Page 2; Ibn Abidin, Vol. V Pages 306, and 307; Mukhtasar al-Quduri, Page 75; and Sharh Ilyas, Vol. III, Pages 257 and 258.

3

Only the Imam can allocate the dead earth. See Ibn Abidin, Vol. V, Page 306.

4

A man that tills the dead earth (*i.e. a man making the dead earth suitable for agriculture - author's note*) gets the right of its ownership by authority of the Imam or Qadi. See Fath al-Qadir, Vol. IX, Page 3; Ibn Abidin, Vol. V, Page 307; Mukhtasar al-Quduri, Page 76, and Sharh Ilyas, Vol. III, Page 258 and 259.

5

The tithe is paid from a yield grown on the dead earth under cultivation. See Ibn Abidin, Vol. V, Page 307; Fath al-Qadir, Vol. IX, Page 4.

6

If someone begins to till the dead earth and four other persons will start to till the surrounding dead earth by turns from four sides, a road to the earth originally mentioned should be laid through that plot which began to be tilled by the latest. See Fath al-Qadir, Vol. IX, Page 5; and Ibn Abidin Vol. V, Page 307.

7

If all dead earths that surround the cultivated dead earth are tilled simultaneously from different sides, the road to the plot, which is located in the center, should be laid through that earth which will be specified by the owner of the last one. See Ibn Abidin, Vol. V, Page 307.

8

If the Imam or Qadi will give the dead earth for tilling to somebody only with the right of its use, the designated person does not have the right of ownership. See Ibn Abidin, Vol. V, Page 307.

9

A non-Moslem is equal in rights with a Moslem in the possession of the dead earth tilled by him. See Fath al-Qadir, Vol. IX, Page 5, Ibn Abidin Vol. V, Page 307; and Mukhtasar al-Quduri, Page 75

10

If a person, who has set an abuttal around the dead earth, does not cultivate it within three years, he loses his right to its possession, and the Imam can give it to another person. See Fath al-Qadir, Vol. IX, Page 5, Ibn Abidin, Vol. V, Page 307; and Mukhtasar al-Quduri, Page 75.

11

Setting an abuttal around the dead earth means its fencing by a stone wall or by a fence made of dry trees' branches, and also by an embankment built of weeds burnt on that earth and sand. See Fath al-Qadir, Vol. IX, Page 6; Ibn Abidin, Vol. V, Page 307; and Sharh Ilyas, Vol. III, Page 259.

12

Tilling of the dead earth means its irrigation, preventing its waterlogging, tillage, or sowing. See Fath al-Qadir, Vol. IX, Page 6; and Ibn Abidin, Vol. V, Page 308.

13

One digging of an aryk (irrigation ditch) on the dead earth without its irrigation is considered only as setting an abuttal. See Fath al-Qadir, Vol. IX page 6; and Ibn Abidin Vol. V, Page 308.

14

The dead earth, which is located in vicinity of settlements, should not be cultivated, and serves as a pasture for the cattle belonging to inhabitants of settlements, for cutting of firewood and as a place for a threshing-floor. See. Fath al-Qadir, Vol. IX, Page 6; Ibn Abidin, Vol. V. Page 308; Mukhtasar al-Quduri, Page 76; and Sharh Ilyas, Vol. III, Page 258

15

If the Imam allows planting a tree on the dead earth a specific area is allocated for it, and within this area nobody has the rights to plant other trees. See Fath al-Qadir, Vol. IX, Page 9, and Ibn Abidin, Vol. V, Page 309.

16

The area allotted for planting a tree (Article 15) equals five cubits in circumference. See Fath al-Qadir, Vol. IX, Page 9, and Ibn Abidin, Vol. V, Page 309.

17

On the earth allocated for a draw-well or a water source, it is forbidden to dig a draw-well or a water source by another person. See Fath al-Qadir, Vol. IX, Pages 6 and 9; Ibn Abidin, Vol. V, Page 308, Mukhtasar al-Quduri, page 76, Sharh Ilyas Vol. III, Pages 260 and 261.

18

If somebody will dig a draw-well outside of the area allotted for a draw-well earlier dug or on the border of this area and water will leave the first draw-well for the second one, the owner of the second draw-well will not be responsible for this event. See Sharh Ilyas, Vol. III, Page 261.

19

If a draw-well is intended for a watering place then an area of forty cubits in circumference is allotted around of it. See Fath al-Qadir, Vol. IX, Page 6; Ibn Abidin, Vol. V, Page 303; Mukhtasar al-Quduri, Page 76; and Sharh Ilyas, Vol. III, Pages 260 and 261.

20

If a watering place is intended specially for pack animals then an area of sixty cubits in circumference is allotted around of it. See Fath al-Qadir, Vol. IX, Page 6; Ibn Abidin, Vol. V, Page 308; Mukhtasar al-Quduri, Page 76; and Sharh Ilyas, Vol. III Pages 260 and 261.

21

If there is a water source on the dead earth then an area of five hundreds of cubits in circumference is allotted around it. See Fath al-Qadir, Vol. IX, Page 6; Ibn Abidin, Vol. V, Page 308; Mukhtasar al-Quduri, Page 73; and Sharh Ilyas, Vol. III, Pages 260 and 261.

22

In all cases mentioned in Articles 19-21, the final decision belongs to the Imam. See Fath al-Qadir, Vol. IX, Page 6; Ibn Abidin, Vol. V, Page 308; Mukhtasar al-Quduri, Page 76; and Sharh Ilyas, Vol. III, Pages 260 and 261.

23

For installing and repairing a water pipe an area sufficient for these purposes should be allocated and fixed⁴⁰. See Fath al-Qadir, Vol. IX, Page 9; Ibn Abidin, Vol. V, Page 309; and Sharh Ilyas, Vol. III, Page 261.

24

Old channels of the Tigris and Euphrates, into which these rivers can return with time, should not be cultivated as they will be necessary when they will turn into rivers again. See Fath al-Qadir, Vol. IX, Page 10; Ibn Abidin, Vol. V, Page 319; and Mukhtasar al-Quduri, Page 76.

25

When the returning of the river into its old channel is not probable, such a channel is considered as "dead one" if it does not adjoin to an arable area. In case of any dispute, the Imam exclusively makes decision. See Fath al-Qadir, Vol. IX, Page 10; Ibn Abidin, Vol. V, Page 310; and Mukhtasar al-Quduri, Page 76.

26

A person, being in possession of a river flowing through another's plot, has the right to use its banks for both walking and disposal of silt (sediments) from the river. See Fath al-Qadir, Vol. IX, Pages 10 and 11; Ibn Abidin, Vol. V, Page 310; Mukhtasar al-Quduri, Page 76; and Sharh Ilyas, Vol. III, Page 262.

ABOUT WATER USE

Waters can be divided into the following: 1. Lake waters; 2. Waters of large rivers; 3. Waters in private use; and 4. Waters in ponds. See Fath al-Qadir, Vol. IX, Pages 12 and 13; Ibn Abidin, Vol. V, Page 311; and Sharh Ilyas, Vol. III, Page 264.

1. About Lake Waters

28

Everyone has the right to drink, to water his own cattle, and to irrigate his own land with water from a lake. See Fath al-Qadir, Vol. IX,

⁴⁰ According to other faqihs, the protection zone should not be allocated up to the point where water flows out on the ground surface, because a water pipe is essentially equated with a river. At the moment when water flows out on the ground surface, it is equated with a spring (water sources), and the protected area of five hundreds of cubits in circumference is allotted around it.

Page 12; Ibn Abidin, Vol. V, Page 311; and Sharh Ilyas Vol. III, Page 264.

29

To build a canal from a lake to his own land plot is not forbidden for anybody. See Fath al-Qadir, Vol. IX, Page 12; and Sharh Ilyas, Vol. III, Page 264.

2. About Waters of Large Rivers

30

Everyone has the right to drink, to water his own cattle and to irrigate his own land withdrawing water from large rivers such as, for example, Jayhun (Amu Darya), Saihun (Syr Darya), Euphrates, and the Tigris. See Fath al-Qadir, Vol. IX, Page 12; Ibn Abidin, Vol. V, Page 311; and Sharh Ilyas, Vol. III, Page 264.

31

If somebody, under cultivating the dead earth, wishes to build an aryk from a large river to his plot for irrigation, he has this right at absence of harm for the majority of population. See Fath al-Qadir, Vol. IX, Page 12; Ibn Abidin, Vol. V, Page 311; and Sharh Ilyas, Vol. III, Page 264.

32

Everyone, both a Moslem and a non-Moslem, has the right to forbid construction of an aryk (irrigation canal) to another's land if owing to this action if harm to the majority of population will be done. For example, there will be a flood or access to the large river will be ceased, or navigation will be stopped. See Fath al-Qadir, Vol. IX, Page 12; and Ibn Abidin, Vol. V, Page 311.

33

Whoever has the right to build a water-mill on the large river if it will not harm the majority of population. See Fath al-Qadir, Vol. IX, Page 12; and Sharh Ilyas, Vol. III, Page 264.

3. About Waters in Private Use

34

If water is in private use of any person, an outsider has the right to use it for drinking and watering his cattle. See Fath al-Qadir, Vol. IX, Page 12; Ibn Abidin, Vol. V, Page 311; and Sharh Ilyas, Vol. III, Page 266.

35

If any outsider will wish to irrigate the land cultivated by him using the water which is in private use, owners of the river have the right to prohibit this action, it is indifferently whether harm is caused by this

prohibition or not, because owners have the exclusive right to the river. See Fath al-Qadir, Vol. IX, Page 12; and Sharh Ilyas, Vol. III, Page 266.

36

If a draw-well, water source, pond, or a river is the property of somebody, this person has the right to forbid the entering to his plot to drink or water a cattle if at the distance of one mile it is possible to find nobody's water. If it is impossible to find water nearby, an owner of a river should give water for drinking and watering another's cattle or permit to an outsider himself to scoop up water without spoiling riverbanks. See Fath al-Qadir, Vol. IX, Page 13; Ibn Abidin, Vol. V, Page 312; and Sharh Ilyas, Vol. III, Page 264.

37

If a draw-well, water source, pond, or a river is on the dead earth, an owner cannot forbid to somebody to drink water from this water source or to water a cattle. See Fath al-Qadir, Vol. IX, Page 13

38

If an owner of water wants to prohibit somebody to use water, and the person, who needs water, dreads for himself or for his cattle he has the right to struggle with an owner of water by weapon, because those who refuse him in water, causes his death. See Fath al-Qadir, Vol. IX, Page 13; and Ibn Abidin, Vol. V, Page 313

39

A person, who is not the owner of water, has no right to irrigate the earth, date-trees, and other trees by the water from another's draw-well, aryk, or river without the permission of the owner of the water source. See Fath al-Qadir, Vol. IX, Page 13; and Ibn Abidin, Vol. V, Page 313.

40

A water source or pond, in which water collected by natural ways, is equated to a river, which is in private use. See Ibn Abidin, Vol. V, Page 312.

4. About the Waters in Ponds

41

The water, which has been collected in ponds, is the property and others do not have any right to use it. See Fath al-Qadir, Vol. IX, Page 13; Ibn Abidin, Vol. V, Page 311; and Sharh Ilyas, Vol. III, Pages 264 and 266.

42

A person, who has stolen the water collected in a pond in a district where it is impossible to get natural water, is not to be punished. See Fath al-Qadir, Vol. IX, Page 13.

6. About Dredging and Cleaning of Rivers

43

There are three types of rivers: a) the rivers which belong to nobody; and use of their waters is not subject to distribution (for example, Euphrates), b) the rivers are objects of private use, and their water is subject to sharing, but all population has the right to use their water resources for drinking and watering a cattle and c) the rivers are objects of private use, and their waters are completely withdrawn from common use. See Fath al-Qadir, Vol. IX, Page 14; and Sharh Ilyas, Vol. III, Page 265.

a) About dredging and cleaning of rivers, which are not in private use

44

Dredging and cleaning of rivers, not being private property should be implemented at the expense of public funds. These funds are formed at the expense of duties and a capitation tax. See Fath al-Qadir, Vol. IX, Page 14; Ibn Abidin, Vol. V, Page 313; and Sharh Ilyas, Vol. III, Page 265.

45

If there are not funds in the treasury, the Imam has the right to force inhabitants to deepen and clean the public river for common use at their expense if they do not agree to do voluntarily that job. See Fath al-Qadir, Vol. IX, Page 14; Ibn Abidin, Vol. V, Page 313; and Sharh Ilyas, Vol. III, Page 265

6) About Dredging and Cleaning of the rivers being a private property, but placed at public disposal

46

Deepening, cleaning and repairing of riverbanks being a private property, but placed at public disposal, are implemented at the expense of owners. See Fath al-Qadir, Vol. IX, Page 15; and Ibn Abidin, Vol. V, Page 313; and Sharh Ilyas, Vol. III, Page 265.

47

If a co-owner of the river refuses to take participation in deepening, cleaning and strengthening of riverbanks for eliminating damage being general for stakeholders or for all population, the Qadi (Judge) is obliged to force him to do this. See Fath al-Qadir, Vol. IX, Page 15; and Ibn Abidin, Vol. V, Page 313.

Expenses for improving the public river are distributed among all participants. If works are being implemented outside the river stretch in somebody's possession, he is exempted from expenses⁴¹. See Fath al-Qadir, Vol. IX, Page 16; Ibn Abidin, Vol. V, Page 314; and Sharh Ilyas, Vol. III, Page 266

b) About deepening, cleaning and banks' protection of the private rivers that are not placed at public disposal

Deepening, cleaning and banks' protection of private rivers should be implemented at the expense of co-owners⁴². See Fath al-Qadir, Vol. IX, Page 15; Sharh Ilyas, Vol. III, Page 265; and Ibn Abidin, Vol. V, Page 314.

If someone among co-owners of the private river refuses to take part in deepening, cleaning and banks' protection of the river other co-owners can implement works at their expense and demand from the mentioned co-owner to pay his share if works were implemented on demand of the Qadi. A person, who refused to take part in works, is forbidden to use the river until he will pay his share of expenses. See Fath al-Qadir, Vol. IX, Page 15; and Ibn Abidin Vol. V, Page 314.

If works for deepening and cleaning of the river is being implemented outside the possession belonging to an owner of the upper river stretch, he has the right to irrigate his plot, not waiting the completion of

⁴¹ For example, if ten people are the owners of a public river then each of them returns one tenth of expenses for repairing. However, if works are being implemented outside a stretch of a river belonging to one of them then other co-owners return the expenses (by 1/9 out of the total sum) since the first co-owner does not need to clean the river. Thus, the owner of a river mouth bears the most costs because he can benefit only in case the process of cleaning runs up to his stretch of the river. Some specialists in law consider that expenses for cleaning a river should be distributed among all co-owners without exemptions since the owner of an upper stretch of river is also interested in a lower stretch because it needs for disposal of excessive water. In this case, the Imam makes the final decision.

⁴² There is a disagreement concerning the definition of terms: a public river and a private river. One lawyers speak that a river belonging to 10 persons, or if one village is located on it, is considered as private; others speak that a river is private if belongs to less than forty persons; the third consider that a river is private if belongs less than 1,000 persons. Over these numbers of co-owners, a river is considered as public one. It is the most correct solution to allow the Qadi to solve this issue at his discretion. Among all existing opinions, the most sound is the proposal to consider a river as private if it belongs less than 100 co-owners and as a public river if co-owners are over this number.

works⁴³. See Fath al-Qadir, Vol. IX, Page 16; and Ibn Abidin, Vol. V, Page 314.

52

Deepening and cleaning of rivers that are used for disposal of wastewater from streets, households and lavatories are implemented at the expense of all co-owners, and the proprietors of upper reaches participate in the works being implemented at downstream sites⁴⁴. See Ibn Abidin, Vol. V, Page 314.

53

Persons casually using the right to drink and to water cattle do not participate in charges for deepening and cleaning of a river. See Fath al-Qadir, Vol. IX, Page 16; and Ibn Abidin, Vol. V, Page 314.

6. ABOUT THE RIGHT TO USE RIVER WATERS

54

A petition concerning the right to use a water source located at another's plot for the certain number of days confirmed by testimonial evidences is admitted well-founded. See Fath al-Qadir, Vol. IX, Page 17; and Ibn Abidin, Vol. V, Page 314.

55

An uncertain petition⁴⁵ concerning the right to use a water source located at another's plot, even confirmed with by testimonial evidences, is to be declared invalid. See Fath al-Qadir, Vol. IX, Page 17; and Ibn Abidin Vol. V, Page 314.

56

If a river, being a private property, flows through another's plot, that owner can demand its removal only in case of when a river has changed its initial channel. Evidences of river's proprietor are taken into account at occurrence of disagreements. See Fath al-Qadir, Vol. IX, Page 18; and Ibn Abidin Vol. V, Page 314.

57

⁴³ Some lawyers consider that an owner of upstream stretch of a river has the right to use water until all co-owners will finish works on their sites.

⁴⁴ Owners of an upstream part of the river are in need of the entire river for disposal of their wastewater and therefore they should bear most of all charges, those who live downstream are bearing less charge and so on up to the last one.

⁴⁵ If witnesses prove that a given person has the right to use water, without specifying precisely the number of days their evidences are not considered as they concern the uncertain right.

If someone claims his right to possess a river outside his plot and proves that he had an aryk with water diversion from this river for irrigation his plot, the Qadi satisfies his petition based on the property right or rights of use. See Fath al-Qadir, Vol. IX, Page 18; and Ibn Abidin Vol. V, Pages 314-315.

58

At occurrence of disagreements concerning a mouth of rivers etc. the Qadi makes decision in line with Item 57. See Fath al-Qadir, Vol. IX, Page 18; and Ibn Abidin, Vol. V, Page 315.

59

In case of disputes concerning water volumes⁴⁶, which co-owners of the rivers can use, the volumes are estimated proportionally a size of their plots⁴⁷. See Fath al-Qadir, Vol. IX, Page 18; and Ibn Abidin, Vol. V, Page 315.

60

If an owner of upstream part of a river can use water only under condition of closing a regulator he has the right to close the last only in time of his turn with the consent of other co-owners. See Fath al-Qadir, Vol. IX, Page 18; and Ibn Abidin, Vol. V, Page 315.

61

If an agreement between co-owners of a river will be reached concerning the order of closing of regulators on the river, it is to declare valid. See Fath al-Qadir, Vol. IX, Page 18; and Ibn Abidin, Vol. V, Page 315.

62

If someone out of owners cannot use the river differently as damming back it and co-owners come to an agreement then a queue of irrigation should be started from a tail part of a river and proceed upstream; when the queue reaches a head stretch, damming of the river is authorized. See Ibn Abidin, Vol. V, Page 316.

63

If co-owners cannot come to an agreement, but at the same time they cannot use water without damming the river, the Imam distributes water among them according to days, and then each of co-owner can close the river in his turn. See Ibn Abidin, Vol. V, Page 316.

64

Nobody among co-owners of a river has the right to build an aryk with water diversion from the given river, and also to install a mill on it

⁴⁶If the parameters of water use were not be specified beforehand

⁴⁷ A purpose of water sharing is irrigation.

without the consent of other owners since a consequence of such actions is damage of riverbanks and occupation of an area used by all owners. See Fath al-Qadir, Vol. IX, Page 18; and Ibn Abidin, Vol. V, Page 315.

65

Construction on a private river, which is placed at public disposal, such structures as water-scoops, and simple or arch bridges, is not permitted. Opposite to that, the proprietor of the river has the right both to erect on it the mentioned structures and to destroy those if they were erected without his consent. See Fath al-Qadir, Vol. IX, Page 19; and Ibn Abidin, Vol. V, Page 315.

66

An owner of a plot located at a head of a river cannot widen its channel since this activity may destroy riverbanks and increase the quantity of water used by the given person. See Fath al-Qadir, Vol. IX, Page 19; and Ibn Abidin, Vol. V, Page 315.

67

If distribution of water is provided by means of regulators it is forbidden both increase their carrying capacity and moving upstream. See Fath al-Qadir, Vol. IX, Page 19; and Ibn Abidin, Vol. V, Page 315.

68

If someone wishes to put a regulator deeper or higher he has this right because under distribution of water a size of a regulator (carrying capacity) is considered irrespective of its depth or height. See. Fath al-Qadir Vol. IX page 19 and Ibn Abidin Vol. V page 315.

69

If the distribution of water is provided by means of regulators, and someone wish to distribute water according to the daily schedule, he has rights for that, since the old manner of water distribution should be in force. See Fath al-Qadir, Vol. IX, Page 19; and Ibn Abidin, Vol. V, Page 315.

70

If each co-owner of a private river has the right to the specified number of regulators, nobody among them can add any regulator, even in the event that such actions do not damage the others. See Fath al-Qadir, Vol. IX, Page 19; and Ibn Abidin, Vol. V, Page 315.

71

On a large river, everyone has the free right to arrange an intake at his own discretion. See Fath al-Qadir, Vol. IX, Page 19; and Ibn Abidin, Vol. V, Page 315.

72

If someone has the right to use the specified quantity of water over different days he cannot withdraw all water at once, or just by consent of other co-owners. See Ibn Abidin, Vol. V, Page 315.

73

Co-owners of the river have no the right to use its water for irrigation of those plots which are not to be irrigated by means of water withdrawal from the given river. See Fath al-Qadir, Vol. IX, Page 19; and Ibn Abidin, Vol. V, Page 315.

74

If one of two co-owners of the private river, having his plot upstream, wish to close some common regulators for both owners to prevent flooding of his plot he does not have this right since can damage another co-owner. See Fath al-Qadir, Vol. IX, Page 20; and Ibn Abidin, Vol. V, Page 316.

75

If one of two co-owners of a private river would like to divide the sequence of water use equally, the consent of his co-owner who at any time alike with his successors has the right to refuse from this agreement is required. See Fath al-Qadir, Vol. IX, Page 20; and Ibn Abidin, Vol. V, Page 315.

76

Mutual exchanging by a queue of water use is to be declared invalid. See Fath al-Qadir, Vol. IX, Page 20; and Ibn Abidin, Vol. V, Page 315.

77

Use of natural waters devolves and by the will. See Fath al-Qadir, Vol. IX, Page 20; and Ibn Abidin, Vol. V, Page 315.

78

The next use of water without the land cannot be given for covering of debts of the owner neither *inter vivos* nor after his death. See Fath al-Qadir, Vol. IX, Page 21; and Ibn Abidin, Vol. V, Page 317.

79

The Imam should join the next use of water to debtor's land not having waters and then should sell it with the sanction of the owner, then he should find out cost of land with water and without water and the difference in cost should be used for covering of debts. See Fath al-Qadir, Vol. IX, Page 21; and Ibn Abidin, Vol. V, Page 317.

80

If a proprietor of water does not have a plot the Imam can buy land without water against the property of the debtor and sell it together with water, subtract the price of bought land from the obtained sum and use

the rests for covering debts. See Fath al-Qadir, Vol. IX, Page 21; and Ibn Abidin, Vol. V, Page 317.

81

If someone irrigates his own plot, and water spills over to a plot of other owner resulting in flood or landslip, the owner of the first plot is not responsible for losses. See Fath al-Qadir, Vol. IX, Page 21; and Ibn Abidin, Vol. V, Page 317

82

A person irrigating his own plot or kitchen garden by another's water without the permission of its owner does not respond for this doing. See Ibn Abidin, Vol. V, Page 317.

THE SHIF'AT

83

Shif'at means the preferential right of a neighbor or co-owner to acquiring land; if such a land is already bought by an outsider a neighbor or co-owner has the right to force him to resell this land for the price paid or adequate price. See Ibn Abidin, Vol. V, Page 152; and Fath al-Qadir, Vol. VIII, Page 298.

84

A reason of occurring the Shif'at is the neighborhood or joint ownership by a certain plot. See Ibn Abidin, Vol. V, Page 152; Fath al-Qadir, Vol. VIII, Page 304; and Fatavi Qazi Khan, Vol. IV, Page 448.

85

The Shif'at operates only with respect to real estate⁴⁸. See Ibn Abidin, Vol. V, Page 152; and Holasat Al-Fatavi, Vol. IV, Page 454.

86

The Shif'at is covering also an indivisible real estate. See Fath al-Qadir, Vol. VIII, Page 327.

87

The Shif'at is covering also the real estate subjected to a tithe and land tax, if they are not state lands. See Ibn Abidin, Vol. V, Page 157.

88

The Shif'at can be confirmed by proofs of witnesses; the property right is established by the court or mutual agreement. See Ibn Abidin, Vol. V, Page 152; Fath al-Qadir, Vol. VIII, Page 306; and Fatavi Qazi Khan, Vol. IV, Page 445.

89

A person having the Shif'at for its realization should declare about it in the presence of witnesses to the dealer if the real estate is not sold

⁴⁸ The real estate is understood as gardens, mills, wells: as to buildings, trees etc. the right for priority purchasing can be used only together with land proprietary, instead of being public land.

yet, or otherwise to the buyer. See Ibn Abidin, Vol. V, Page 159; Fath al-Qadir, Vol. VIII, Page 305; and Fatavi Qazi Khan, Vol. IV, Page 447.

90

First of all, a co-owner and then a neighbor have the Shif'at. See Fath al-Qadir, Vol. VIII, Page 294; Fatavi Qazi Khan, Vol. IV, Page 445; and Holasat Al-Fatavi, Vol. IV, Page 454.

91

In the presence of several persons, having the Shif'at, it is prioritized proportionally their shares⁴⁹. See Sharh Ilyas, Vol. III, Page 26; Fatavi Qazi Khan, Vol. IV, Page 445; and Holasat Al-Fatavi, Vol. IV, Page 454.

92

If the real estate is divided among co-owners, neighbors do not have the Shif'at. See Fath al-Qadir, Vol. VIII, Page 334.

93

Non-Moslems equally with Moslems can use the Shif'at, as well as men and women of the full legal age and under age. See Fath al-Qadir, Vol. VIII, Page 328; Holasat Al-Fatavi, Vol. IV, Page 454; Ibn Abidin, Vol. V, Page 155; and Fatavi Qazi Khan, Vol. IV, Page 445.

94

Father or the trustee appointed by him can refuse from the Shif'at for a juvenile⁵⁰. See Fath al-Qadir, Vol. VIII, Page 445; Fatavi Qazi Khan, Vol. IV, Page 445.

95

If a seller is a trusted person on behalf of an absent person or a trustee appointed by the deceased, the person having the Shif'at can buy a plot if this plot is at his disposal⁵¹. See Fatavi Qazi Khan, Vol. IV, Page 447.

96

A person having the Shif'at should declare about his right to a buyer or an authorized person of the latter, or a truthful person in the

⁴⁹ If a house or plot belongs to three persons, and the first person possesses a half of the joint property, the second person - 1/3, and the third person - 1/6 and if the person owning a half would like to sell his part the Qadi, at wish of other co-owners to take advantage of the Shif'at, awards the property to them according to their shares.

⁵⁰ Muhammad and Zafar speak that the right of an juvenile on the Shif'at is kept in force until he attains his majority.

⁵¹ In the absence of the father or the trustee appointed by him, they are replaced by a grandfather or the trustee appointed by him; in the absence of these persons the Qadi appoints the trustee of an juvenile.

presence of witnesses. See Fath al-Qadir, Vol. VIII, Pages 307 and 308; Ibn Abidin, Vol. V, Page 157; and Fatavi Qazi Khan, Vol. IV, Page 445.

97

If a person having the Shif'at declares about it, the Qadi asks confirmations from the owner of given real estate. In case of denying of the alleged right by the latter, the Qadi awards to an applicant the Shif'at based on proofs given by him. See Fath al-Qadir, Vol. VIII, Page 308; Ibn Abidin, Vol. V, Page 160; and Fatavi Qazi Khan, Vol. IV, Page 445.

98

The Shif'at not declared, at least during a month⁵² and more, is lost just by the own application of its legal owner. See Fath al-Qadir, Vol. VIII, Page 310, Holasat Al-Fatavi Vol. IV page 455, Ibn Abidin Vol. V page 157; and Fatavi Qazi Khan, Vol. IV, Page 448.

99

The right of ownership to the land subjected to the Shif'at is transferred either by means of the voluntary transfer of land by a buyer to a person having the Shif'at, or by Qadi's decision. See Fath al-Qadir, Vol. VIII, Page 306; and Fatavi Qazi Khan, Vol. IV, Page 445.

100

If the disputable real estate is already transferred to the buyer there is not necessity in the presence of the seller in the process of investigation of the complaint. See Ibn Abidin, Vol. V, Page 160.

101

A person, who has bought a house or plot for whoever, is the respondent with respect to a person having the Shif'at to this real estate. Under transferring the property to the principal, the buyer abdicates all responsibility. See Fath al-Qadir, Vol. VIII, Page 314.

102

If a buyer of the real estate denies the Shif'at declared by other persons, the Shif'at of an applicant is considered at the adjuration. See Fath al-Qadir, Vol. VIII, Page 312; Ibn Abidin, Vol. V, Page 160; and Fatavi Qazi Khan, Vol. IV, Page 451.

103

⁵² In Muhammad's opinion, the Shif'at is lost at the end of month after submitting the application in the presence of witnesses with respect to this right

The Qadi examines complaints concerning the buyer only in his presence. See Fath al-Qadir, Vol. VIII, Page 312; and Ibn Abidin, Vol. V, Page 160.

104

The Qadi shall award the Shif'at and define the term of payment to the seller of the real estate before transfer of the real estate sold to the buyer. See Ibn Abidin, Vol. V, Page 160.

105

If the Qadi awards the Shif'at to someone, this person cannot refuse from it. See Holasat Al-Fatavi, Vol. IV, Page 454; and Ibn Abidin, Vol. V, Page 163.

106

A person having the Shif'at to the real estate cannot get a part of the real estate and refuse from another part. See Ibn Abidin, Vol. V, Page 156.

107

If one out of co-owners of Shif'at is absent, the Qadi, at the request of the owner who is present, awards the Shif'at to him entirely. If an absentee will come back and will request to restore his rights the Qadi should award to him his part equal to a part of the first co-owner, when they have identical rights. If an absentee has the preferential right to the Shif'at this right is awarded to him entirely. If his right to the Shif'at is of less priority, the Qadi refuses him to his request. See Fath al-Qadir, Vol. VIII, Page 304; Holasat Al-Fatavi, Vol. IV, Page 455; Ibn Abidin, Vol. V, Page 156; and Fatavi Qazi Khan, Vol. IV, Page 447.

108

If a few persons having the Shif'at will be absent, Shif'at *in corpore* remains in force for the others. See Fath al-Qadir, Vol. VIII, Page 304; Ibn Abidin, Vol. V, Page 156; and Fatavi Qazi Khan, Vol. IV, Page 447.

109

If a person having the Shif'at concedes his part to another person then he loses his right at all. See Ibn Abidin, Vol. V, Page 156.

110

If a plot sold together with trees on which there are fruits a person having the Shif'at has the right to the land and trees with fruits. See Fath al-Qadir, Vol. VIII, Page 326; and Fatavi Qazi Khan, Vol. IV, Page 445.

111

If the real estate was given against the real estate a person having the Shif'at can buy one real estate for cost of other real estate. See Fath al-Qadir, Vol. VIII, Page 319; and Fatavi Qazi Khan, Vol. IV, Page 445.

112

If someone sells his plot together with the right to use water the Shif'at to water belongs, first, to a co-owner of an aryk, after that to an owner of a canal from which water is diverted into the aryk and, at last, to an owner of a large river from which water is diverted into the canal. See Ibn Abidin, Vol. V, Page 155.

113

If a seller of the real estate is the person empowered to act for an absentee or the trustee appointed by the deceased, the person having Shif'at to the given property can demand it from the seller if it is with him. See Fath al-Qadir, Vol. VIII, Page 314; and Holasat Al-Fatavi, Vol. IV, Page 456.

114

If the real estate was sold not against cash, a person having the Shif'at can receive the plot immediately or wait for the term of payment for the plot bought, but he does not have the right to receive the plot immediately without the payment of its cost in cash. See Fath al-Qadir, Vol. VIII, Page 319; Holasat Al-Fatavi, Vol. IV, Page 456; and Fatavi Qazi Khan, Vol. IV, Page 445.

115

A person having the Shif'at is not obliged to pay for the plot, which was sold not against cash, by the same things for what it was sold, but may pay only their cost. If the real estate is sold against things that can be measured or weighed the person having the Shif'at can buy it for the same measure or weight. See Fath al-Qadir, Vol. VIII, Page 318.

116

If someone will buy a half of the unshared real estate, and a seller will divide that a person having the Shif'at can purchase his half from the buyer or refuse from it. See Fath al-Qadir, Vol. VIII, Page 345; and Fatavi Qazi Khan, Vol. IV, Page 453.

117

At judicial trial, the person having the Shif'at should pay the cost of land plot entirely, and the new owner can keep the plot until will receive its cost entirely. See Fatavi Qazi Khan, Vol. IV, Page 452.

118

If the Qadi awards the plot according to the Shif'at to someone after a buyer has already erected his buildings or planted trees at the plot, a person having the right to the plot can get the plot in such kind as it exists, after paying for the cost of buildings and trees, or to offer

the buyer to move buildings and cut trees. See Fath al-Qadir, Vol. VIII, Page 322; Holasat Al-Fatavi, Vol. IV, Page 455; Fatavi Qazi Khan, Vol. IV, Page 448; and Ibn Abidin, Vol. V, Page 163.

119

If after declaring the Shif'at by someone and if a house on this plot, without someone's bad intention, will be ruined or destroyed by fire, or trees of the garden will dry up, a person having the Shif'at has the free choice to buy the real estate for its cost or to refuse from it. See Fath al-Qadir, Vol. VIII, Page 315; and Holasat Al-Fatavi, Vol. IV, Page 455.

120

If a buyer will remove buildings a person having the Shif'at at his own discretion can buy a plot for its cost or refuse from it, but does not have the right to take away buildings removed. See Fath al-Qadir, Vol. VIII, Page 326; and Holasat Al-Fatavi, Vol. IV, Page 455.

121

A person having the Shif'at can examine the real estate and refuse from it if he will find out any defects, even if a new owner has rejected any his responsibility in the process of transferring a plot subjected to the Shif'at, but he does not have the right to lay down any conditions or to defer the payment of cost of the plot. See Ibn Abidin, Vol. V, Page 161; and Fatavi Qazi Khan, Vol. IV, Page 445.

122

If a person having the Shif'at, after purchasing of the real estate, will refuse from it without the Qadi's court, owing to any defect or improper conditions his Shif'at remains in force. See Fath al-Qadir, Vol. VIII, page 334; and Fatavi Qazi Khan, Vol. IV, Page 445.

123

If a few persons will buy the real estate at one person, the person having the Shif'at can claim only to one part. If one person will buy the real estate at several persons, the person having the Shif'at, has a free choice to buy all land or refuse from it. See Fath al-Qadir, Vol. VIII, Page 345; and Fatavi Qazi Khan, Vol. IV, Page 450.

124

If a person having the Shif'at will refuse from his right in favor of the known buyer but instead of him a man of straw will act the right Shif'at is restored in favor of the initial legal owner of it. See Fath al-Qadir, Vol. VIII, Page 341; Holasat Al-Fatavi, Vol. IV Page 455; and Fatavi Qazi Khan, Vol. IV, Page 446.

125

If a person mentioned in Clause 124 learns that a buyer to whom he has conceded the Shif'at purchases the property together with the third party he can reserve to himself the Shif'at in a share of the third party. See Fath al-Qadir, Vol. VIII, Page 342; Holasat Al-Fatavi, Vol. IV, Page 455; and Fatavi Qazi Khan, Vol. IV, Page 446.

126

If a person having the Shif'at, will concede it in half of the property, but in practice all property will be sold the Shif'at concerning the second half remains in force. See Fath al-Qadir, Vol. VIII, Page 342; Holasat Al-Fatavi, Vol. IV, Page 455; and Fatavi Qazi Khan, Vol. IV, Page 446.

127

If someone makes a present in the form of the real estate with some conditions the Shif'at is kept in force only after performance of these conditions. See Fatavi Qazi Khan, Vol. IV, Page 445.

128

In case of the disagreement between a person having the Shif'at and a buyer of the property concerning its price, the opinion of the buyer is considered. See Fath al-Qadir, Vol. VIII, Page 315; Ibn Abidin, Vol. V, Page 160; and Fatavi Qazi Khan, Vol. IV, Page 452.

129

If a seller of a plot shows the price higher than a buyer then after the adjuration by both, the Qadi approves the price shown by the sworn, and the person having the Shif'at receives the plot at this price. See Fath al-Qadir, Vol. VIII, Page 317; Ibn Abidin, Vol. V, Page 161; and Fatavi Qazi Khan Vol. IV page 451.

130

If both arguing parties agree to take the oath the Qadi declares a bargain as invalid, and a person having the Shif'at gets the plot at the price of the seller. See Fath al-Qadir, Vol. VIII, Page 317; Ibn Abidin, Vol. V, Page 161; and Fatavi Qazi Khan, Vol. IV, Page 451.

131

In the presence of proofs at both arguing parties, the proofs of a person having the Shif'at are taken into account. See. Fath al-Qadir Vol. VIII page 315, Ibn Abidin Vol. V page 160, Fatavi Qazi Khan Vol. IV page 452

132

If at purchasing of the plot according to the Shif'at a buyer specifies one price, and a seller specifies another price, and at the same time smaller and actually yet not received, the person having the Shif'at

can get the property at the price specified by the seller. See Fath al-Qadir, Vol. VIII, Page 317; Ibn Abidin, Vol. V, Page 161; and Fatavi Qazi Khan, Vol. IV, Page 451.

133

If a seller makes discount from the quoted sale price for a buyer, a new price is considered as valid and for a person having the Shif'at. If a seller refuses from a payment at all, such a refusal is void with regard to a person having the Shif'at. See Fath al-Qadir, Vol. VIII, Page 318; and Fatavi Qazi Khan, Vol. IV, Page 448.

134

If a buyer increases the price quoted by a seller this extra charge is not obligatory for a person having the Shif'at. See Fath al-Qadir, Vol. VIII, Page 318; and Fatavi Qazi Khan, Vol. IV, Page 448.

135

The Shif'at does not cover the real estate received by a husband as the marriage portion or given to a divorced wife, or as the payment made for to shed one's blood. See Fath al-Qadir, Vol. VIII, Page 329; Holasat Al-Fatavi, Vol. IV, Page 454; and Fatavi Qazi Khan, Vol. IV, Page 445.

136

The Shif'at does not cover a personal estate (vessels, buildings, and trees sold without land). See Fath al-Qadir, Vol. VIII, Page 329; Holasat Al-Fatavi, Vol. IV, Page 454; and Fatavi Qazi Khan, Vol. IV, Page 445.

137

The Shif'at does not cover navigable rivers and public roads. See Ibn Abidin, Vol. V, Page 155.

138

The Shif'at does not cover the *vakuph realty*⁵³, and owners of the *vakuph realty* do not have the Shif'at. See Ibn Abidin, Vol. V, Page 157; Holasat Al-Fatavi, Vol. IV, Page 454; and Fatavi Qazi Khan, Vol. IV, Page 449.

139

A person empowered to act for an owner who sells the real estate does not use the Shif'at. See Fath al-Qadir, Vol. VIII, Page 340; Ibn Abidin, Vol. V, Page 168; and Fatavi Qazi Khan, Vol. IV, Page 449.

140

The Shif'at does not cover a property incorrectly bought. See Fath al-Qadir, Vol. VIII, Page 332; and Ibn Abidin, Vol. V, Page 166.

⁵³ The *vakuph realty* is the real estate which rich men grant to a minister of religion, teacher of the madrasah etc. without the right to sell it.

141

The Shif'at does not cover the real estate conditionally sold. If the conditional character of the property is ceased, the Shif'at comes into force. See Fath al-Qadir, Vol. VIII, Page 331; and Fatavi Qazi Khan, Vol. IV, Page 445.

142

The Shif'at is not excluded for a conditional buyer of the real estate. See Fath al-Qadir, Vol. VIII, Page 331; Fatavi Qazi Khan, Vol. IV, Page 445; and Ibn Abidin, Vol. V, Page 170.

143

If an owner of the real estate will sell all his land having left a strip of arshin⁵⁴-wide along the entire border with his neighbor the Shif'at for the latter is abolished. See Fath al-Qadir, Vol. VIII, Page 342.

144

If a person having the Shif'at and having learned about sale of the real estate will not take care of the invitation of witnesses, having an opportunity for that, he loses this right. See Fath al-Qadir, Vol. VIII, Page 335; Fatavi Qazi Khan, Vol. IV, Page 445; and Holasat Al-Fatavi, Vol. IV, Page 455.

145

If a person having the Shif'at, prior to the Qadi's court, sells the real estate, which is subjected to the Shif'at the latter ceases to be effective. See Fath al-Qadir, Vol. VIII, Page 339; Fatavi Qazi Khan, Vol. IV, Page 445; Holasat Al-Fatavi, Vol. IV, Page 455; and Ibn Abidin, Vol. V, Page 170.

146

If a person having the Shif'at and having bought the real estate will refuse from it in line with the Qadi's court owing to any defect or an improper condition, then after this fact his Shif'at ceases to be effective. See Fath al-Qadir, Vol. VIII, Page 334; and Fatavi Qazi Khan, Vol. IV, Page 445.

147

If the real estate, which is covered by the Shif'at, turns into a cemetery or a mosque, or *vakuph*, or will not be rented, the Shif'at for it ceases to be effective. See Ibn Abidin, Vol. V, Page 170; and Fatavi Qazi Khan, Vol. IV page 448.

148

If a person having the Shif'at and having bought a land plot, dies up prior to the Qadi's court he loses this right. See Fath al-Qadir, Vol.

⁵⁴ Arshin is old linear measure (= 0.711 m. = 2 ft. 4 in.)

VIII, Page 339; Fatavi Qazi Khan, Vol. IV, Page 445; and Ibn Abidin, Vol. V, Page 170.

149

If a person having the Shif'at dies after purchase of a land plot in line with the Qadi's court, but not having paid its cost, the bargain is obligatory for successors of the deceased person. See Fath al-Qadir, Vol. VIII, Page 339; Fatavi Qazi Khan, Vol. IV, Page 445; Ibn Abidin, Vol. V, Page 170; and Holasat Al-Fatavi, Vol. IV, Page 455.

150

If a person who has bought the land plot dies, the Shif'at keeps in force. See Fath al-Qadir, Vol. VIII, Page 339; Fatavi Qazi Khan, Vol. IV, Page 445; Ibn Abidin, Vol. V, Page 170; and Holasat Al-Fatavi, Vol. IV, Page 455.

MUZARAAT

151

"*Muzaraat*" means an agreement between two persons with regard to cultivating the land plot belonging to one of them for payment in kind (a part of the yield). See Fath al-Qadir, Vol. VIII, Page 354.

152

The *Muzaraat* is considered as valid under observing the following conditions:

1. The land plot should be suitable for agriculture⁵⁵;
2. An owner of a plot and a person cultivating a plot have to have the right to signing the agreement⁵⁶
3. Term of validity of the agreement has to be precisely designated;
4. A person who should supply seeds for sowing has to be precisely specified;
5. A person who should not supply seeds for sowing has to be precisely specified;
6. The land plot has to be free (unsown) and is given to a farmer at his full disposal⁵⁷;
7. A seeds' variety has to be specified. See Fath al-Qadir, Vol. VIII, Pages 386 and 387; Fatavi Qazi Khan, Vol. IV, Pages 223 and 224; and Ibn Abidin, Vol. V, Pages 193 and 194.

153

The Muzaraat is permitted if the following conditions are met:

⁵⁵ If at making the *Muzaraat* the plot appears unusable for cultivation for any casual reason, which can take place, as for example, the temporary lack of access to water or wintertime then the agreement made is considered as valid.

⁵⁶ The contracting parties should be of the full legal age and capable

⁵⁷ The landowner should be familiar with land conditions because due to a various type of soils the farmer is not capable to specify an extent of efforts.

- 1) The plot and seeds are provided by one party, and labor and personal labor by another party;
- 2) The plot and personal labor are provided by one party, and labor and seeds by another party; and
- 3) The plot, seeds and labor are provided by one party, and personal work by another party.

See Fath al-Qadir, Vol. VIII, Pages 388 and 389; Fatavi Qazi Khan, Vol. IV, Pages 226 and 227; Ibn Abidin, Vol. V, Page 194, Mukhtasar al-Quduri, Page 77.

154

If the *Muzaraat* sets forth provisions necessary for producing a crop with respect to a farmer, for example, to deliver water for irrigation, etc. the agreement is considered as valid. See Fatavi Qazi Khan, Vol. IV, Page 229.

155

If the *Muzaraat* sets forth provisions, without which a usual crop cannot be produced, for example, tilling of soil with respect to a farmer the agreement is considered as valid. See Fatavi Qazi Khan, Vol. IV, Page 229.

156

If such provisions as repairing fencings, construction of canals, water supply for irrigation are set forth with respect to an owner the *Muzaraat* is considered as valid irrespective of whether seeds will be given by him or a landowner. See Fatavi Qazi Khan, Vol. IV, Page 229.

157

If the *Muzaraat* does not set forth provisions that provide for deepening and cleaning of the rivers, and a farmer performs these works voluntarily the *Muzaraat* is considered as valid and a farmer does not have the right receive a fee for these works. See Fatavi Qazi Khan, Vol. IV, Page 230.

158

If the *Muzaraat* is considered as valid the crop should be shared according to its provisions. See Fath al-Qadir, Vol. VIII, Page 393; Ibn Abidin, Vol. V, Page 196; and Mukhtasar al-Quduri, Page 77.

159

The *Muzaraat* is considered as valid if it states that grain is shared fifty-fifty between both parties without the mention of straw, which should be given away to an owner of seeds. See Fath al-Qadir, Vol. VIII, Page 392; and Ibn Abidin, Vol. V, Page 196.

160

A farmer is obliged to irrigate a plot if without irrigation a usual crop cannot be produced. See Fatavi Qazi Khan, Vol. IV, Page 230.

161

If the land produces a usual crop without tillage, but with tillage it will produce much more, a farmer has the right of free choice to plow land or not. See Fatavi Qazi Khan, Vol. IV, Page 230.

162

If the land does not produce a crop without tillage at all or produces a poor yield, a farmer has no the right for sowing without tillage. See Fatavi Qazi Khan, Vol. IV page 230.

163

If a farmer supplies seeds he has the right of free choice to make the contract setting forth the provision concerning tillage or to refuse from it. See Fatavi Qazi Khan Vol. IV, Page 230.

164

When rainwater is in shortage a landowner is obliged to irrigate his plot. See Fatavi Qazi Khan, Vol. IV, Page 230.

165

If a farmer supplies seeds, and a crop cannot be produced without tillage a farmer is obliged to till land. See Fatavi Qazi Khan, Vol. IV, Page 230.

166

If land will not produce a crop a farmer will receive nothing. See Fath al-Qadir, Vol. VIII, Page 392.

167

The *Muzaraat* is considered as void if the following conditions are met: 1) a plot and labor are provided by one party, and seeds and personal labor by another party; and 2) seeds are provided by one party, and a plot, labor, and personal labor by another party. See Fath al-Qadir, Vol. VIII, Page 390; Fatavi Qazi Khan, Vol. IV, Page 226; Ibn Abidin, Vol. V, Page 195; and Mukhtasar al-Quduri, Page 77.

168

The *Muzaraat* is considered is as void if the following conditions are met: 1) a specific part of a crop is precisely specified for one of contracting parties; 2) it is envisaged that one party should receive straw, and another party should receive grain; and 3) it is envisaged that both parties should receive straw, but only one of them all grain. See Fath al-Qadir, Vol. VIII, Page 392; Fatavi Qazi Khan, Vol. IV, Page 227; Ibn Abidin, Vol. V, Page 194; and Mukhtasar al-Quduri, Page 77

169

If the *Muzaraat* will be considered as void, the owner of seeds will receive a crop. See Fath al-Qadir, Vol. VIII, Page 393; Fatavi Qazi Khan, Vol. IV, Page 228; Ibn Abidin, Vol. V, Page 196; and Mukhtasar al-Quduri, Page 77.

170

If a farmer tills and irrigates a plot but does not receive a crop, he has the right to receive a respective fee when a landowner has provided seeds. See Fath al-Qadir, Vol. VIII, Pages 385 and 393; Fatavi Qazi Khan, Vol. IV, Page 232; Ibn Abidin, Vol. V, Page 193; and Mukhtasar al-Quduri, Page 77.

171

In case of a poor harvest, if a farmer provides seeds he should pay a rental. See Fath al-Qadir, Vol. VIII, Pages 385 and 393; Fatavi Qazi Khan, Vol. IV, Page 232; Ibn Abidin, Vol. V, Page 193; and Mukhtasar al-Quduri, Page 77.

172

If after making the *Muzaraat* the party that has given seeds will refuse from works it cannot be forced to that. See Fath al-Qadir, Vol. VIII, Page 394; and Mukhtasar al-Quduri, Page 77.

173

If after making the *Muzaraat* the party, which has not provided seeds refuses from works the Qadi is obliged to force it to work. See Fath al-Qadir, Vol. VIII, Page 394; and Mukhtasar al-Quduri, Page 77.

174

The *Muzaraat* that envisages a payment at the rate 1/3 or 1/4 of yield is invalid. See Fath al-Qadir, Vol. VIII, Page 384; and Mukhtasar al-Quduri, Page 77.

175

If one of contracting parties will die after harvesting the *Muzaraat* is ceased⁵⁸. See Fath al-Qadir, Vol. VIII, Page 395; and Mukhtasar al-Quduri, Page 77.

176

If an owner of a plot will die prior to sowing the *Muzaraat* is ceased and a farmer does not receive anything for his work in spite of tillage and digging of arys. See Fath al-Qadir, Vol. VIII, Page 396; and Ibn Abidin, Vol. V, Page 197.

177

If a farmer will die after standing crops, and his successors will agree to continue work until a harvest they have the right to keep the *Muzaraat* in force, even if an owner of this plot does not assent, but they

⁵⁸ For example; if a farmer rents a plot for 3 years under the *Muzaraat*, and after the 1st year someone of contracting parties will die the *Muzaraat* for other 2 years is ceased after distribution of a crop according to the agreement.

do not have the right to demand any compensation for their work. See Fath al-Qadir, Vol. VIII, Page 398; and Ibn Abidin, Vol. V, Page 198.

178

If an owner of a plot is compelled to sell his plot for covering debts it is permitted to cancel the *Muzaraat*. See Fath al-Qadir, Vol. VIII, Page 396; and Ibn Abidin, Vol. V, Pages 197 and 198.

179

If there are sprouts but a crop is not harvested yet the plot can be sold for covering of debts only after harvesting. See Fath al-Qadir, Vol. VIII, Page 396; and Ibn Abidin, Vol. V, Pages 197 and 198.

180

At expiring the term of the *Muzaraat*, if crops has not yet given a yield a farmer should pay a rent corresponding to a share of the plot area prior to harvest, and the expenses related to the crop should be distributed between an owner and a farmer proportionally to their rights. See Mukhtasar al-Quduri, Page 77.

181

In case of the validity of the *Muzaraat* if a farmer does not irrigate a plot resulting in loss of a crop he is responsible for all losses. See Ibn Abidin, Vol. V, Page 199.

182

If in a case specified in Clause 181 it is impossible to specify the cost of a crop, then prices of this plot with crop and without crop are determined, and a variation in prices is the cost of the lost crop. See Ibn Abidin, Vol. V, Page 199.

183

Under the *Muzaraat*, the guarantee is not permitted and the guarantor is not responsible for loss of crop to farmer. See Ibn Abidin, Vol. V, Page 199.

184

A farmer and an owner of a plot are responsible for the payment to a reaper, thresher, and for winnowing grain proportionally their shares. See Fatavi Qazi Khan, Vol. IV, Page 229; and Mukhtasar al-Quduri, Page 78.

Table of Contents

PREFACE.....	3
1. INTRODUCTION, OR THE XXI CENTURY IS THE CENTURY OF WATER RESOURCES PROTECTION AND SAVING	6
2. LIFE ON THE EARTH ORIGINATED AND EXISTS THANKS TO THE WATER.....	14
3. THE SCIENTIFIC BASIS OF STUDING THE WATER AND WATER USE	44
4. THE WATER AND CIVILIZATION. GLOBALIZATION – FOR AND AGAINST A MAN AND NATURE	51
5. «INHUMAN ATTITUDE» TO WATER OR SOCIAL ETHICS OF WATER USE	58
6. ONLY A MORAL PERSON CAN PRESERVE WATER.....	67
CONCLUSION.....	72
ANNEX.....	76